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SUBJECT: BBK TO HAUNT PRESIDENT-ELECT LEE?

Classified By: POL Joseph Y. Yun. Reasons 1.4 (b,d).

11. (C) Summary: It does not look like Lee Myung-bak's political problems will be over with his presidential election victory in two days. On December 17, the National Assembly convened to approve the appointment of a special prosecutor to look into allegations that Lee was involved in BBK's stock manipulation scheme. The whole BBK affair received unexpected traction over the weekend with the airing of a video clip, made in 2000, that showed Lee stating that he had established the investment firm BBK, something he has categorically denied since the start of the presidential election campaign. In response to the video clip, President Roh requested that the Prosecution reinvestigate the case, which in turn prompted Lee Myung-bak to agree to the appointment of a special prosecutor by the National Assembly.

Speculation abounds over what might happen to "President-elect" Lee should the special prosecutor decide to indict him, because there is no constitutional protection for a president-elect. Pundits are unanimous, however, in the view that the special prosecutor will not be able to finish his investigation before the inauguration on February 25. By that time, it will be "President" Lee, removable by impeachment only. End Summary.

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December 5 Prosecution Report  
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12. (SBU) On December 5, the Seoul Prosecutor's Office announced that Grand National Party (GNP) candidate and presidential frontrunner Lee Myung-bak was clear of suspicion in the BBK stock manipulation scandal (reftel). The prosecutor's office reported that they found no evidence supporting allegations that Lee co-owned the BBK asset management company with Christopher Kim (aka Kim Kyung-joon).

Following the announcement, Lee's lead in the polls increased, mostly at the expense of conservative rival Lee Hoi-chang, who entered the race specifically to pick up the conservative mantle should Lee Myung-bak be found guilty in the stock manipulation scheme and be forced out of the race.

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UNDP Fights Back  
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13. (SBU) Despite the prosecutor's report, the United New Democratic Party (UNDP) and other rivals vowed to continue to

fight to unearth Lee Myung-bak's connection to the scandal. The UNDP last week convened a special session of the National Assembly to vote on proposed legislation to impeach the ROK Prosecutors involved in the BBK affair. UNDP legislators charged that the ROK Prosecutors overlooked GNP presidential candidate Lee Myung-bak's role in the various criminal offenses committed by BBK owner Christopher Kim.

¶4. (SBU) The GNP responded to the UNDP's efforts on December 14 by physically blocking UNDP members from taking the speaker's podium in the National Assembly, thus preventing a vote. The GNP first used a lead pipe to bar the doors of the Assembly, and, when workers sawed through the pipe, a tussle ensued as UNDP lawmakers tried to overcome the GNP representatives who were blocking the podium. To quell the violence, the Assembly Speaker intervened and said further discussion would take place December 17. The impeachment bill was thus automatically voided when it was not acted upon within 72 hours after introduction to the National Assembly.

¶5. (SBU) The UNDP on December 16 intensified their fight against Lee Myung-bak at a press conference by airing a video of a speech Lee Myung-bak gave in October 2000 in which he states that he "established BBK." Following release of the video, President Roh Moo-hyun weighed in and instructed the Ministry of Justice to consider re-investigating the BBK case if the UNDP's special prosecutor bill failed to pass the National Assembly. In response to Roh's announcement, Lee Myung-bak announced at a midnight press conference that would accept the decision to appoint a special prosecutor as long as the bill passed through the National Assembly, "according to normal rules and procedures." The following day the Ministry of Justice announced it would also accept the special prosecutor, but not re-investigate the case itself. Meanwhile, the UNDP continues to call for the resignation of Lee's candidacy for president. The special prosecutor's bill was passed on December 17 with the support of all 160 lawmakers from the UNDP, Democratic Labor Party (DLP), and Democratic Party (DP), while the GNP lawmakers boycotted the vote.

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Timeline for the Special Prosecutor  
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¶6. (SBU) Following the passage of the Special Prosecutor's bill it will take at most 72 days until the prosecution completes its investigation. The President has to promulgate the law within 15 days and the special prosecutor will be appointed within an additional 10 days. Another seven-day preparation period will be given, and the investigation will last 30 days, with a possible 10-day extension available. According to the schedule specified by the UNDP's special prosecutor bill, the investigation could be finalized before the Presidential Inauguration on February 25.

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President-Elect Vulnerabilities  
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¶7. (SBU) The potential problems created if an investigation finds a connection between Lee and the BBK case are unprecedented as the Korean Constitution does not specifically define the legal status of a president-elect. The President's rights are clearly defined in regards to legal implications and Article 84 of the Constitution says, "Except when she/he is implicated with civil or external warfare, the President shall not be subject to a criminal prosecution during his/her term in office." No such immunity provision exists, however, for a president-elect. Theoretically, a president-elect may be both summoned and indicted by a special prosecutor. Problems arise because, without any precedent, opinions vary widely over whether a president-elect should be subject to criminal prosecution. Article 68 Paragraph 2 of the Constitution states, "In case of the occurrence of a vacancy in the Presidency, or in case the President-elect is disqualified due to death, a court ruling, or any other reason, then a replacement shall be

elected within 60 days." Article 192 of the Election Law makes the provision that if an elected official loses his/her eligibility for election before the term begins, then the election outcome becomes null and void. In such a case, the Constitution provides that a by-election is to be held.

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Possible Post-Election Scenarios  
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¶8. (SBU) If Lee Myung-bak is elected, he will be the first president-elect to be investigated by a special prosecutor. Should the special prosecutor rule that Lee was involved in the BBK case after the inauguration, it would undermine what little moral credibility Lee retains. It would also create problems as he seeks to form his first cabinet and could hamper policy initiatives. If the special prosecutor indicts Lee before his inauguration, he would become a suspect in a criminal case. These scenarios, however, would not deprive Lee of his president-elect status before the court's final ruling, which would inevitably take another several months after the criminal indictment. Even if the UNDP files a lawsuit to invalidate Lee's election, this too would need the court's final ruling in order to deprive Lee of his position. Any issues not clearly specified in the law would likely be sent to the Constitutional Court for interpretation.

¶9. (SBU) While the UNDP likely realizes that it cannot change what appears to be an inevitable loss in the presidential election, they are most likely focusing their energies on the National Assembly elections in April. Even if Lee Myung-bak is not indicted by the special prosecutor, the blow to Lee's moral credibility will probably help strengthen the liberals' position in the run-up to the 2008 general elections. Han Gwi-young, a pollster at the Korea Society Opinion Institute (KSOI) offered her analysis in a media interview, "Even if the trend is not reversed in the remaining run-up to the presidential election, the UNDP might benefit from the narrowed gap to gain ground as a stronger contender in the metropolitan region in the National Assembly elections."

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Comment  
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¶10. (C) While the recent attempts by the UNDP to further discredit Lee will probably have little influence on the outcome of the election overall, they may present unprecedented legal issues should Lee win December 19. Although presidential candidates are not subject to criminal charges during the campaign period, no such exemptions are in place for the president-elect. If the special prosecutor connects Lee to the BBK case before the February 25 inauguration, it may be a catalyst for constitutional reform because no precedents exist to deal with the situation. If connections are made following the inauguration, it will no doubt wreck havoc on the early weeks and months of Lee's presidency.

VERSHBOW